

of vacancies to the tenants who will be displaced along with the addresses of the local public housing agencies.

(d) *Relocation expenses.* The Commissioner shall require the owner of eligible low income housing who prepays or terminates the insurance contract resulting in the displacement of tenants to pay 50 percent of the relocation expenses of each family which is relocated, except that the Commissioner shall increase such percentage to the extent that State or local law of general applicability requires a higher payment by the owner.

(e) *Continued occupancy.* Each owner who prepays the mortgage or terminates the mortgage insurance contract on eligible low income housing shall, as provided in paragraph (g) of this section, allow the tenants occupying units in such project on the date of submission of a notice of intent under § 248.105 to remain in the project for a period of three years, commencing on the date of prepayment or contract termination, at rent levels existing at the time of prepayment or termination, except for rent increases made necessary due to increased operating costs.

(f) *Replacement unit.* In any case in which the Commissioner requires an owner to allow tenants to occupy units under paragraph (e) of this section, an owner may fulfill the requirements of such paragraph by providing such assistance necessary for the tenant to rent a decent, safe, and sanitary unit in another project for the same 3-year period and at a rental cost to the tenant not in excess of the rental amount the tenant would have been required to pay to the owner in the owner's project, except that the tenant must freely agree to waive the right to occupy the unit in the owner's project. The provisions of paragraph (d) of this section requiring an owner who prepays or terminates an insurance contract to pay a portion of the relocation expenses incurred by displaced tenants shall also be applicable to tenants who relocate pursuant to this paragraph.

(g) *Applicability.* The provisions of paragraphs (e) and (f) of this section shall apply only to:

(1) All tenants in eligible low income housing projects located in a low-vacancy area; and

(2) Special needs tenants.

(h) *Low Vacancy Areas.* The Commissioner shall notify the owner, within 30 days of the owner's request to prepay under § 248.169, whether the project is located in a low vacancy area for purposes of paragraph (g) of this section.

(i) *Required acceptance of section 8 assistance.* Any owner who prepays the mortgage or terminates the mortgage insurance contract on eligible low income housing and maintains the project for residential rental occupancy may not refuse to rent, refuse to negotiate for the rental of, or otherwise make unavailable or deny the rental of a dwelling unit in such project to any person, or discriminate against any person in the terms, conditions, or privileges or rental of a unit, or in the provision of services or facilities in connection therewith, because the person receives tenant-based assistance under the Housing Choice Voucher Program.

(j) *Regional pools.* In providing assistance under this section, the Commissioner shall allocate the assistance on a regional basis through the regional offices of the Department of Housing and Urban Development. The Commissioner shall allocate assistance under this section in a manner so that the total number of assisted units in each such region available for occupancy by, and affordable to, low income families and persons does not decrease because of the prepayment of a mortgage on eligible low income housing or the termination of an insurance contract on such project.

(k) This section shall only apply to prepayments and terminations occurring pursuant to §§ 248.157(l) and 248.169.

[57 FR 12041, Apr. 8, 1992, as amended at 64 FR 26639, May 14, 1999]

§ 248.169 Permissible prepayment or voluntary termination and modification of commitments.

(a) *In general.* Notwithstanding any limitations on prepayment or voluntary termination under subpart B of this part, an owner may terminate the low income affordability restrictions through prepayment or voluntary termination, subject to compliance with the provisions of § 248.165, under one of the following circumstances:

(1) The Commissioner approves a plan of action under § 248.153(a), but does not provide the assistance approved in such plan and contained in an executed use agreement between the Commissioner and the owner, including section 8 assistance or a loan provided under part 219 of this chapter, but not including insurance of a rehabilitation or equity take-out loan under part 241 of this chapter, during the 15-month period beginning on the date of final approval of the plan of action;

(2) After the date that the project would have been eligible for prepayment pursuant to the terms of the mortgage, notwithstanding this part, the Commissioner approves a plan of action under § 248.157 or § 248.161, but does not provide the assistance approved in such plan, including section 8 assistance, a loan provided under part 219 of this chapter, a grant provided under § 248.157(o), or a grant under § 248.161(d), before the earlier of:

(i) The expiration of the 2-month period beginning on the commencement of the first fiscal year beginning after such final approval; or

(ii) The expiration of the 6-month period beginning on the date of final approval.

(3) The Commissioner approves a plan of action under §§ 248.157 or 248.161 for any eligible low income housing not covered by paragraph (a)(2) of this section, but does not provide the assistance approved in such plan before the earlier of:

(i) The expiration of the 2-month period beginning on the commencement of the first fiscal year beginning after such final approval; or

(ii) The expiration of the 9-month period beginning on the date of final approval.

(4) An owner who intended to transfer the project to a qualified purchaser under § 248.157 or § 248.161, and fully complied with the provisions of such section,

(i) Did not receive any bona fide offers from any qualified purchasers within the applicable time periods; or

(ii) Received and accepted a bona fide offer from a qualified purchaser, but the sales transaction fell through for reasons not attributable in whole or in part to the owner, and the owner then

complied with the requirements of § 248.157(l) and did not receive another bona fide offer from any qualified purchasers.

(b) *Section 8 assistance.* When providing section 8 assistance, the Commissioner may enter into a contract with an owner, contingent upon the future availability of appropriations, for the purpose of renewing expiring contracts for rental assistance as provided in appropriations acts, to extend the term of such rental assistance for such additional period or periods necessary to carry out an approved plan of action. The contract and approved plan of action shall provide that, if the Commissioner is unable to extend the term of such rental assistance or is unable to develop a revised package of incentives providing benefits to the owner comparable to those received under the original approved plan of action, the Commissioner, upon the request of the owner, shall take the following actions, subject to the limitations under the following paragraphs:

(1) Modify the binding commitments made pursuant to § 248.145(a)(2)-(10) that are dependent upon such rental assistance; or

(2) If the Commissioner determines that such modification is infeasible, permit the owner to prepay the mortgage and terminate the plan of action and any implementing use agreements or restrictions, but only if the owner agrees in writing to comply with the provisions of § 248.165.

(c) *Failure to provide section 8 assistance.* With regard to paragraph (b) of this section, the Commissioner shall notify the owner of an inability to either extend the term of section 8 rental assistance or to develop a revised package of incentives providing benefits comparable to those received under the original plan of action as soon as practicable upon discovering that fact. The owner shall inform the Commissioner in writing, within 30 days of receipt of the notice that, since the Commissioner is unable to fulfill the terms of the original plan of action, the owner intends to request that the Commissioner take action under paragraphs (b)(1) or (2) of this section. The Commissioner shall, no later than 90 days from receiving the owner's notice, take

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action to extend the rental assistance contract and to continue the binding commitments under § 248.145(a)(2)–(10).

§ 248.173 Resident homeownership program.

(a) *Formation of resident council.* Tenants seeking to purchase eligible low income housing in accordance with §§ 248.157 and 248.161 shall organize a resident council for the purpose of developing a resident homeownership program in accordance with standards established by the Commissioner. In order to fulfill the purposes of this section, the resident council shall work with a public or private nonprofit organization or a public body, including an agency or instrumentality thereof. Such organization shall have sufficient experience to enable it to help the tenants to consider their options and to develop the capacity necessary to own and manage the project, where appropriate, and shall be approved by the Commissioner.

(b) *Submission of expression of interest.* A resident council shall identify itself as such in an expression of interest submitted pursuant to § 248.157 or § 248.161 and shall state that, it is interested in purchasing the project pursuant to a homeownership program.

(c) *Bona fide offer.* When submitting an offer to purchase the project pursuant to this section, the resident council must simultaneously submit a certified list of project tenants representing at least 75 percent of the occupied units in the project, and representing at least 50 percent of all of the units in the project, who have expressed an interest in participating in the homeownership program developed by the resident council. An offer made without this certified list will not be considered a bona fide offer for the purposes of subpart B of this part.

(d) *Submission of a homeownership program.* (1) The resident council shall prepare a homeownership program acceptable to the Commissioner for giving all residents of the project an opportunity to become homeowners. The plan shall describe the major elements of, and schedules for, the homeownership program and demonstrate how the program complies with all applicable requirements of this section. The plan

shall also describe the resident council's current abilities and proposed capacity-building activities to successfully carry out the homeownership program in compliance with this section. The homeownership program shall include, at a minimum, the following information:

(i) The amount of grant funds requested from the Commissioner, and the expected amounts and sources of other funding;

(ii) The proposed use of the grant funds to be received from HUD and of all other funds, including proceeds from the sale of units to initial purchasers, consistent with paragraph (h) of this section;

(iii) A summary of major rehabilitation activities to be carried out, including repairs, replacements and improvements;

(iv) The price at which the resident council intends to transfer ownership interests in, or shares representing, units in the project, broken down by unit size and/or type; the factors that will influence the establishment of such price, including, but not limited to, the resident council's acquisition cost, estimated rehabilitation costs, capitalization of reserves and organizational costs; how the price arrived at by the resident council compares to the estimated appraised value of the ownership interests or shares; and the underwriting standard that the resident council plans to use, or reasonably expects a public or private lender to use, for potential tenant purchasers, consistent with paragraph (g)(2) of this section;

(v) The expected number of very low, low and moderate income tenants that will be initial owners under the program, consistent with paragraph (g)(1) of this section;

(vi) A pro forma analysis which demonstrates the financial feasibility and viability of the homeownership program, based on the required conditions specified in paragraph (g) of this section;

(vii) The financing arrangements that the tenants are expected to pursue or to be provided, including financing available through the resident council